

X. CLOSED SESSION MATTERS FOR NOVEMBER 17, 2015**CS-1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

(Paragraph (1) of Subdivision (d) Government Code Section 54956.9)

SimplexGrinnell LP v. County of Los Angeles, et al., BC 565974

This lawsuit alleges breach of contract relating to the installation of a nurse call system at Harbor-UCLA Medical Center.

The Board authorized settlement of the matter entitled SimplexGrinnell LP v. County of Los Angeles, et al. The details of the settlement will be made available once finalized by all parties. The vote of the Board was unanimous with all Supervisors being present. (15-5372)

Attachments: Settlement Agreement

CS-2. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Paragraph (2) of Subdivision (d) of Government Code Section 54956.9)

Significant exposure to litigation (one case)

No reportable action was taken. (15-3529)

CS-3. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Paragraph (4) of Subdivision (d) of Government Code Section 54956.9)

Initiation of litigation (one case)

In Open Session, this item was continued one week to November 24, 2015. (14-5307)

CS-4. PUBLIC EMPLOYMENT

(Government Code Section 54957)

Consideration of candidate(s) for appointment to the position of Health Agency Director.

No reportable action was taken. (15-4962)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by SimplexGrinnell, LLP ("Simplex"), and the County of Los Angeles ("County"). The effective date of this Agreement is September 24, 2015.

Recitals: This Agreement is made with reference to the following facts:

1. The County and Simplex in 2009 entered into two contracts, denoted as Purchase Orders, for work to be performed by Simplex at the County's facility, Harbor UCLA Hospital ("HUCLA"). The Purchase Orders are denoted: (1) DPO-HH-09369119-1, dated July 16, 2009, for \$1,013,106.60, for the replacement of the Nurse Call System at HUCLA (hereinafter "Nurse Call Purchase Order"); and (2) DPO-HH-10361433-1, dated October 27, 2009, for \$1,057,635.51, for installation of additional communication systems at HUCLA (hereinafter "Integrated Systems Purchase Order"). The work to be performed pursuant to the Nurse Call Purchase Order and the Integrated Systems Purchase Order shall hereinafter together be referred to as "the Project."

2. Disputes arose between Simplex and the County, arising out of the Project. Simplex sued the County in Los Angeles County Superior Court in December 2014 (SimplexGrinnell LP v. County of Los Angeles, et al., LASC Case No. BC 565 974) alleging, inter alia, that the County had breached the Nurse Call Purchase Order and the Integrated Systems Purchase Order. The County denied Simplex's allegations and cross-complained against Simplex alleging, inter alia, that Simplex breached the Nurse Call Purchase Order and the Integrated Systems Purchase Order. Simplex denied the County's allegations (the "Litigation").

3. Both Simplex and the County deny any liability to the other. Simplex and the County now wish to compromise and settle their respective claims and defenses in order to avoid the expense and uncertainty of further litigation.

Settlement Terms: Simplex and the County agree as follows:

1. Incorporation of Recitals: The Recitals above are incorporated herein by this reference.

2. No Admission of Liability: This Agreement is a compromise of disputed claims and nothing herein is to be construed as an admission of fact or of liability by Simplex or the County.

3. Payment of the Balance Pursuant to the Nurse Call Purchase Order: On or before September 24, 2015, the County shall deliver to counsel for Simplex County Warrant No. TS 0020401097 in the sum of Two Hundred Fifty-Three Thousand, Two Hundred Seventy Six Dollars and Sixty-Five Cents (\$253,276.65), which sum the parties agree, constitutes the entire unpaid balance under the original Nurse Call Purchase Order (hereinafter "P.O. Balance") for services performed thereunder.

3.1. The County's payment of the P.O. Balance is not subject to approval by the County Board of Supervisors ("Board"), and Simplex shall be entitled to receive and retain the P.O. Balance, regardless of whether or not the Board approves the terms and conditions of this Agreement, aside from this paragraph 3.

3.2. In consideration of the County's payment of the P.O. Balance as herein provided, Simplex hereby waives and releases any and all claims and causes of action regarding the original P.O. Balance, including without limitation, to recover interest on the original P.O. Balance and/or attorneys' fees, which waiver and release shall be valid and binding upon Simplex regardless of whether or not the Board approves the terms and conditions of this Agreement aside from this paragraph 3. This waiver of the original P.O. Balance shall not include Impact Claims arising in the course of the work performed under the original Purchase Order, including delay, compaction, acceleration, inefficiencies, extended Project overhead, extended home office overhead, increased labor hours, and escalating material prices, or any legal fees claim associated with such claims.

3.3. Simplex agrees that neither the County's payment to Simplex of the P.O. Balance, nor the County's letter to Simplex attached hereto as Exhibit 1, shall be

deemed or asserted by Simplex, in the Litigation or otherwise, to be any admission or evidence of any liability whatsoever by the County, and that they are without prejudice to any claim, defense or set off by the County in the Litigation should the Board not approve the terms and conditions of this Agreement aside from this paragraph 3.

4. All of the terms and conditions of this Agreement, other than paragraphs 1 through 3 above, shall be subject to approval by the Board, in its sole discretion, and shall be of no force and effect prior to such approval by the Board.

5. Further Payment to Simplex: Subject to Board approval as provided in paragraph 4, and promptly following such Board approval, the County shall pay to Simplex the sum of Two Hundred Sixty-Seven Thousand Dollars (\$267,000.00).

6. Dismissal of Litigation: Within fifteen (15) days of Simplex's receipt of the County's payment provided for in paragraph 5, the parties shall mutually file requests for dismissal with prejudice of Simplex's complaint and the County's cross-complaint, each party to bear its own costs and legal fees, if any.

7. Releases: Effective upon the County's payment to Simplex provided for in paragraph 5, the parties mutually release the claims and causes of action against each other as follows:

7.1. Simplex Release of the County: Simplex, on behalf of itself and its parents, subsidiaries, directors, officers, shareholders, managers, employees, agents, consultants, attorneys and representatives, hereby forever releases and discharges the County and its Board of Supervisors and all the County's Board members, employees, agents, consultants, attorneys and representatives, from any and all claims, demands, actions, causes of action, obligations, liabilities, expenses, costs, interest, attorneys' fees and damages of whatever nature whatsoever and of any kind, whether in law or at equity, whether past, present or future, whether known or unknown, suspected or unsuspected, arising out of or in any way related to, the Project or to the Nurse Call Purchase Order or the Integrated Systems Purchase Order, including without limitation, any claims alleged in the Litigation.

7.2. The County's Release of Simplex: Except as provided in subparagraph 7.2.1, the County releases and discharges Simplex and Simplex's parents, subsidiaries, directors, employees, agents, consultants attorneys and representatives, from any and all claims, demands, actions, causes of action, obligations, liabilities, expenses, costs, interest, attorneys' fees and damages of whatever nature whatsoever and of any kind, whether in law or at equity, whether past, present or future, whether known or unknown, suspected or unsuspected, arising out of or in any way related to, to the Project or to the Nurse Call Purchase Order or the Integrated Systems Purchase Order, including without limitation, any claims alleged in the Litigation.

7.2.1. Excluded from the County's release of Simplex shall be all rights of the County pursuant to any warranty or ongoing service agreement provided by Simplex, or any of its vendors, pursuant to either the Nurse Call Purchase Order or the Integrated Systems Purchase Order.

8. Unknown and Future Claims; Waiver of California Civil Code Section 1542: To the full extent of matters released in this Agreement, the parties also expressly waive each and all of the provisions of California Civil Code Section 1542, which provides:

GENERAL RELEASE—CLAIMS EXTINGUISHED.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The parties understand and acknowledge that the significance and consequence of this Agreement and of their specific waiver of Section 1542, and expressly agree that this Agreement shall be given full force and effect according to each of its terms and provisions, including those relating to unknown and unsuspected claims, demands, obligations and causes of action, if any, as well as those relating to any other claims, demands, obligations or causes of action herein specified. The parties acknowledge that they or their attorneys may hereafter discover facts different from or in addition to those

that they now know or believe to be true with respect to the claims, demands, obligations and causes of action of every kind released herein. The parties agree that the releases given herein shall be and remain in effect as a full and complete release of the persons and entities released thereby, notwithstanding any such different or additional facts.

9. Miscellaneous Provisions.

9.1. Voluntary Agreement: This Agreement is executed voluntarily and without duress or undue influence from or on behalf of any person, firm, or entity, whether public or private. Each party acknowledges that it has been represented by independent counsel of its own choosing in the negotiation of this Agreement, and that it has been advised regarding the same before executing this Agreement.

9.2. Entire Agreement; Extinction of Any Prior Representations or Agreements: This Agreement contains the entire agreement between the parties with respect to the subject matters covered by it. This Agreement supersedes every representation, warranty, or agreement relating the matters covered by this Agreement between the Parties, or any of them, which predates the execution hereof, and any such representation, warranty, or agreement with respect to such matters that are not specifically referred to herein, whether written or oral, shall be void and shall not bind any of the parties hereto. Each party represents and warrants that it did not rely upon any representation not contained herein in entering into this Agreement.

9.3. Representations and Warranties: The individuals executing this Agreement on behalf of a party represent and warrant that each has the legal power, right, and actual authority to bind that party to the terms and conditions of this Agreement. The parties hereby represent and warrant to each other that none of them has heretofore assigned or transferred to any person or entity any of the rights or claims released under this Agreement.

9.4. Settlement Agreement Binding upon Successors: This Agreement shall bind and inure to the benefit of the respective successors, assigns and personal representatives of the parties.

9.5. Modifications and Amendments: No amendment, change, or modification of this Agreement shall be valid unless in writing signed by all parties.

9.6. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together as one and the same instrument.

9.7. Facsimile Signatures: Facsimile and .pdf copies of signatures on this Agreement shall be deemed valid and original. Each party has a right to obtain original signatures from the other.

9.8. Negotiated Agreement: This Agreement is the result of arm's-length negotiations between the parties. There shall be no presumption in the interpretation hereof that any ambiguity is to be resolved against any party.

9.9. Further Assurances: Without further consideration, each of the parties hereby agrees to execute such further documents and to take such further action as may reasonably be necessary to effectively carry out the purposes of this Agreement, including but not limited to the creation or recording of any liens created by this Agreement.

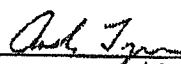
9.10. Severability: If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, such provision shall be severed from the remainder of this Agreement, and that remainder shall continue in full force and effect.

9.11. California Law: California substantive law shall govern any dispute that arises under this Agreement.

9.12. Legal Counsel: THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED BY INDEPENDENT COUNSEL OF THEIR OWN CHOOSING IN THE NEGOTIATION OF THIS AGREEMENT, AND THAT THEY HAVE BEEN FULLY ADVISED REGARDING ALL ASPECTS AND RAMIFICATIONS OF THE SAME BEFORE THEY EXECUTED IT;

SIMPLEXGRINNELL LP

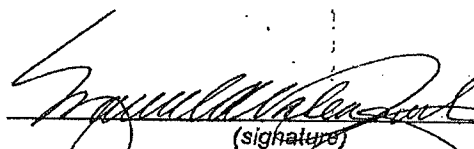
Dated: Sept 24, 2015

By: 
(signature)

Andrew Pagan (print name)
Its: District General Manager
(title)

COUNTY OF LOS ANGELES

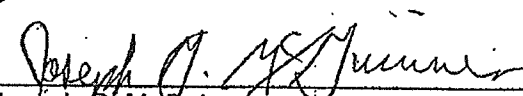
Dated: SEPTEMBER 24, 2015

By: 
(signature)
MANUEL A. VALENZUELA
(print name)
Its: ASSISTANT COUNTY COUNSEL
(title)

APPROVED AS TO FORM:

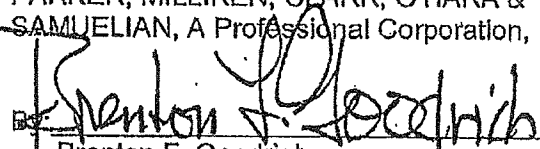
MCGUINNESS & ASSOCIATES

Dated: _____, 2015

By: 
Joseph G. McGuinness
Attorney for SIMPLEXGRINNELL LP

PARKER, MILLIKEN, CLARK, O'HARA &
SAMUELIAN, A Professional Corporation,

Dated: Sept 23, 2015

By: 
Brenton F. Goodrich
Attorneys for COUNTY OF LOS ANGELES



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

MARY C. WICKHAM
Interim County Counsel

September 24, 2015

TELEPHONE
(213) 974-1835

FACSIMILE
(213) 633-1915

TDD
(213) 633-0901

E-MAIL
mvalenzuela@counsel.lacounty.gov

SimplexGrinnell LP
c/o Joseph G. McGuinness, Esq.
McGuinness & Associates
3858 Carson Street, Suite 301
Torrance, CA 90503

**Re: Purchase Order DPO-HH-09369119-1, dated July 16, 2009, for
\$ 1,013,106.60, for the replacement of the Nurse Call System at
HUCLA ("Nurse Call P.O.")**

and

**Purchase Order DPO-HH-10361433-1, dated October 27, 2009,
for \$1,057,635.51, for installation of additional communication
systems at HUCLA ("Integrated Systems P.O.")**

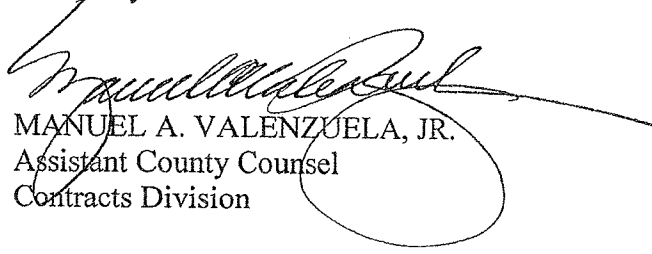
TO WHOM IT MAY CONCERN:

This confirms that, pursuant to the terms and conditions of the Settlement Agreement and Release ("Agreement") between the County of Los Angeles ("County") and SimplexGrinnell LP, the County has agreed to release the sum of Two Hundred Fifty-Three Thousand, Two Hundred Seventy-Six Dollars and Sixty-Five Cents (\$253,276.65) invoiced under the Nurse Call P.O. and, subject to approval by the County Board of Supervisors as provided in the Agreement, which approval will be recommended, the County will pay an additional sum of Two Hundred Sixty-Seven Thousand Dollars (\$267,000.00) to settle the litigation arising out of the Nurse Call P.O. and the Integrated Systems P.O.

Very truly yours,

MARY C. WICKHAM
Interim County Counsel

By


MANUEL A. VALENZUELA, JR.
Assistant County Counsel
Contracts Division

MV:mpg